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**NAVAL WAR COLLEGE  
Newport, R.I.**

**BRING LAWS TO LIFE:**

**THE METHODOLOGY TO ENSURE STABILITY AND PEACE IN VIETNAM**

**by**

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**ASAC, DHS**

**A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.**

**The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.**

**Signature: \_\_\_\_\_**

**31 October 2013**

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## ABSTRACT

Despite measures taken to implement *Doi Moi* (renovation), the record of the Vietnamese government with respect to human rights and legal reform remains suspect and threatens to jeopardize Vietnam's standing within the international community. These deficiencies, combined with internal restrictions on freedoms and fundamental rights, have increased Vietnamese discontent with the ruling party and stand in the way of a balanced and secure Vietnam. Recently the world watched, and dictators trembled, as the "Arab Spring" erupted across the Middle East, resulting in violence and the overthrow of several autocratic governments. The Arab Spring was sparked by poor economic conditions, oppression, and tyranny. Many of these conditions can be observed within Vietnam where the legal system is dominated by the governing party. To promote a stable, prosperous, and equitable Vietnamese society, the United States should encourage and support the Government of Vietnam to move from a socialist legal system toward a state governed by the rule of law.

## INTRODUCTION

*“No oppression is so heavy or lasting as that which is inflicted by the perversion and exorbitance of legal authority.”*

- Joseph Addison

In 2011, the United States (U.S.) publically announced that its foreign policy would shift, or “pivot,” to the Pacific region as U.S. priorities were “rebalanced” toward the Asia-Pacific Theater.<sup>1</sup> As stated by U.S. President Barak Obama in November of 2011: “With most of the world’s nuclear powers and some half of humanity, Asia will largely define whether the century ahead will be marked by conflict or cooperation, needless suffering or human progress.”<sup>2</sup>

Dominating the eastern coast of the Indochina Peninsula in Southeast Asia, the Socialist Republic of Vietnam affords the U.S. and the U.S. Pacific Command (PACOM) myriad opportunities to provide stability and to gain strategic influence in a region that is growing in both importance and complexity. Possessing more than two thousand miles of coastline along the South China Sea and nearly eight hundred miles of shared land border with China, Vietnam’s strategic importance cannot be overstated.<sup>3</sup> Seen as a growing “middle power” in Southeast Asia, Vietnam offers the U.S. a potential foothold in a region heavily influenced by the increasing supremacy of China.<sup>4</sup> In 1986, Vietnam entered into a period of *Doi Moi* (renovation) seeking to restructure its economic and legal systems.<sup>5</sup> Due in large part to *Doi Moi* reforms Vietnam has emerged in the world market and has significantly improved its ties with the United States.<sup>6</sup>

Despite measures taken to implement *Doi Moi*, the record of the Vietnamese government with respect to human rights and legal reform remains suspect and threatens to jeopardize Vietnam’s standing within the international community. Furthermore, these deficiencies, combined with internal restrictions on freedoms and fundamental rights, have increased

Vietnamese discontent with the ruling party, and stand in the way of a balanced and secure Vietnam.

Recently the world watched, and dictators trembled, as the “Arab Spring” erupted across the Middle East, resulting in violence and the overthrow of several autocratic governments. The Arab Spring was sparked by poor economic conditions, oppression, and what has been called a “police-state phenomenon” through which governments manipulated the written law.<sup>7</sup> Many of these conditions can be seen inside Vietnam where the legal system is dominated by the Communist Party. To promote a stable, prosperous, and equitable Vietnamese society, the United States should encourage and support the Government of Vietnam to move from a socialist legal system toward a state governed by the rule of law.

### **FORMALITY IS OVERRATED**

The idea of transforming Vietnam to the rule of law crosses a wide spectrum of opinion. Some liken it to the failed “law and development” attempts of the past, where futile efforts were made to export western legal theory to non-democratic nations.<sup>8</sup> Other opponents to the rule of law might seek to accuse the United States of leading a conspiracy of likeminded nations to distribute democratic ideals or to institute regime change. Finally, some might promote the argument that the Communist Party will never adopt rule of law because doing so would reduce the state’s power and control.

Perhaps those possessing the strongest voices against rule of law reform are the critics who point to the informal system of justice that is widely practiced in Vietnam, while highlighting the corruption and inaccessibility of the formal system. These observers would point to the informal system as the best near term solution for the continued transition and growth of Vietnam’s economic markets.<sup>9</sup>

The current formal legal system in Vietnam certainly has several limitations and is not widely used by many segments of the population. A Provincial Competitiveness Index survey completed in 2008 indicates that the majority of businesses involved in a dispute in Vietnam are hesitant to take the matter before a court for adjudication. (**Figure 1**)

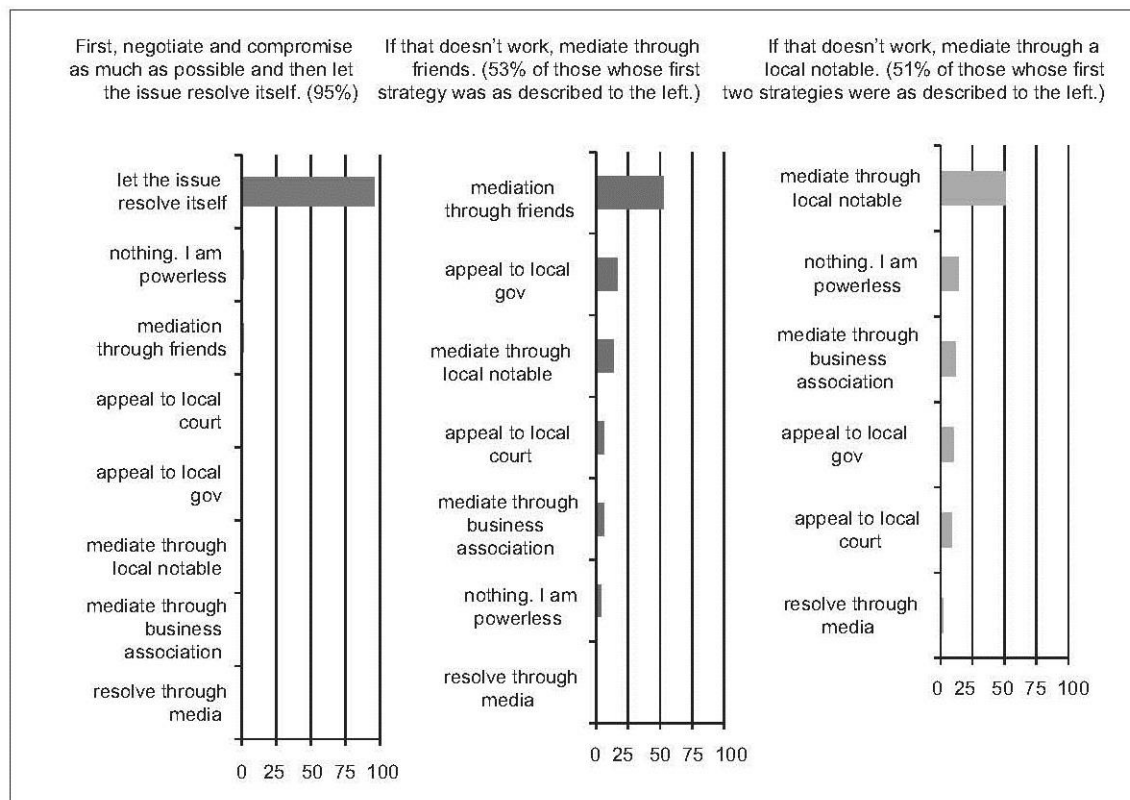


Figure 1: Strategies for dealing with business disputes.<sup>10</sup>

Hesitancy to use the formal legal system is especially prevalent in the rural areas of Vietnam where formal legislation is largely irrelevant and a casual system of justice has taken hold.<sup>11</sup> Vietnam's informal system is based on village traditions, "personalized trust," and personal reputations.<sup>12</sup> An examination of trade in the Mekong Delta, for example, indicates that only ten percent of farmers rely on a written contract, less than half rely on oral contracts, and over forty percent report using no agreement at all.<sup>13</sup>



The evidence does indeed indicate that Vietnam has a vigorous and widely practiced informal system of justice that has been in place for decades and that is deeply rooted in the ancient traditions of the country.

### **EVOLUTION OF THE VIETNAMESE LEGAL SYSTEM**

Vietnam today is deeply affected by a history that has seen its people governed by dissimilar outside entities. As a result of these various influences, Vietnam's present-day legal culture retains elements from past occupations by Imperial China, Colonial France, as well as its long time ties to the former Soviet Union's Marxist Socialist legal tradition.<sup>14</sup> More recently Vietnam's legal system has also been swayed by western legal concepts that often stand in conflict with its diverse history.<sup>15</sup>

Deeply ingrained in Vietnamese culture is the Confucian principle that places the state in a paternal role over the people and gives it wide latitude to implement laws to control the moral compass of the country.<sup>16</sup> Confucian principles of *thou dang* ("situational validity") and legal analogy allow various state actors to interpret the law from a vague and unwritten set of standards.<sup>17</sup> This has resulted in inconsistent effects and a persistent trend to ignore the written law, as evidenced by the Vietnamese maxim which states that, "the laws of the Emperor give way to the customs of the village."<sup>18</sup>

In 1946, Vietnam produced its first constitution declaring itself free from French rule and by the early 1960s Vietnam was importing Soviet legal theory and practices.<sup>19</sup> Soviet traditions establish party supremacy over the government, the people, the state, and the law.<sup>20</sup> Ruling from a position of "moral example," officials in Vietnam interpret laws based on five moral instructions; "diligence, thrift, honesty, loyalty, and social needs first."<sup>21</sup> The instruction of social needs first, in practice, translates to protecting the needs of the party first. As a result of these

theories, the state uses the law as a tool to control and manage society. While control is divested in three branches—legislative, executive and the judiciary—there is no discernible separation of power and the ruling Communist Party exercises authority over all segments of the government.<sup>22</sup>

Observing history it is apparent that Vietnam has mixed Confucian thought with socialist legal practice to produce a unique and often contradictory legal system designed to reinforce the state's power over the law and people. The Vietnamese people have an adage: "A thousand years of Chinese Rule, A hundred years of French subjugation, And ten years of American domination, But we survived, unified."<sup>23</sup> While it can be argued that the Vietnamese legal system did emerge "unified" from years of foreign occupation, it must be conceded that the system that developed is united primarily by its desire, above all else, to protect its own interests, which are inseparable from those of the party.

## **RULE OF LAW**

Demonstrable of the fact that *Doi Moi* reforms have not greatly impacted Vietnam's legal system is the World Bank's World Governance Indicator Project 2012, which ranked Vietnam below the fortieth percentile in rule of law every year since 2009; this ranking places Vietnam amongst the world's lowest performing states.<sup>24</sup> Also telling is Vietnam's ranking on the World Justice Project's (WJP) Rule of Law Index, 2012-2013. **(Figure 2)** The WJP index takes a broad snapshot of a country's performance in eight aspects related to the rule of law, with each aspect being rated on a score of 0 to 1.0.<sup>25</sup> It is enlightening to examine Vietnam's poor overall performance in comparison to that of the other ninety-seven countries rated, with Vietnam being ranked eighty-second in limited government powers, sixtieth in corruption, seventy-ninth in fundamental rights, and seventy-ninth in civil justice.<sup>26</sup>

# VIETNAM

Ho Chi Minh City, Ha Noi, Hai Phong

## 1. WJP Rule of Law Index

	WJP RULE OF LAW INDEX FACTORS	SCORE	GLOBAL RANKING	REGIONAL RANKING	INCOME GROUP RANKING
<b>Income</b> Lower middle <b>Region</b> East Asia & Pacific <b>Population</b> 92M (2012) 31% Urban 17% in three largest cities	Factor 1: Limited Government Powers	0.40	82/97	12/14	18/23
	Factor 2: Absence of Corruption	0.43	60/97	9/14	7/23
	Factor 3: Order and Security	0.82	24/97	7/14	3/23
	Factor 4: Fundamental Rights	0.48	79/97	12/14	16/23
	Factor 5: Open Government	0.35	91/97	13/14	20/23
	Factor 6: Regulatory Enforcement	0.39	83/97	13/14	18/23
	Factor 7: Civil Justice	0.43	79/97	10/14	16/23
	Factor 8: Criminal Justice	0.57	37/97	9/14	3/23

## 2. Scores for all WJP Rule of Law Index sub-factors

In each graph, a sub-factor is represented by a radius from the center of the circle to the periphery. The center of each circle corresponds to the lowest possible score for each sub-factor (0.00); the outer edge of the circle marks the highest possible score (1.00).

Key: ■ Vietnam ● Top Score ■ Lower middle income ▲ East Asia & Pacific

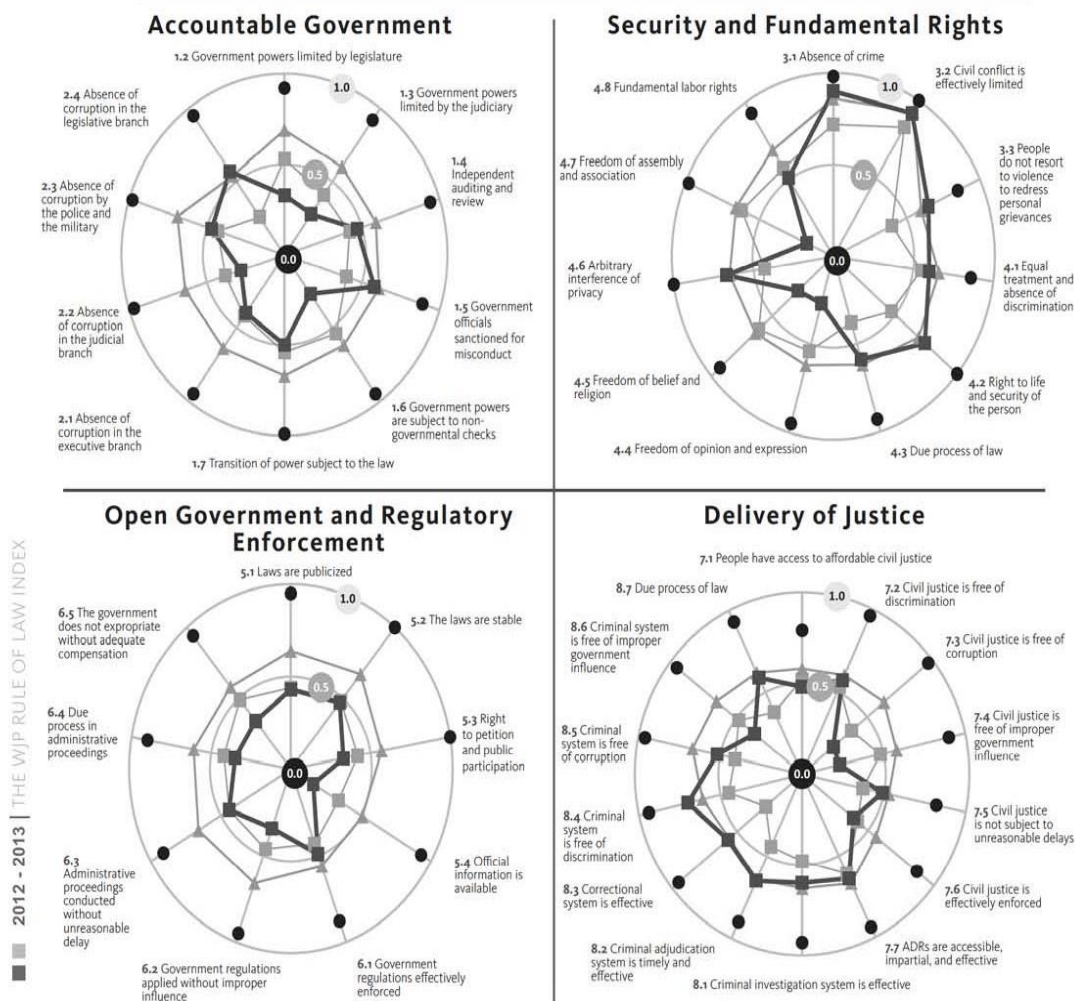


Figure 2: WJP Rule of Law Index 2012-2013 Vietnam Country Profile.<sup>27</sup>

It is difficult to find agreement on a singular definition for the term rule of law, as it is a concept rather than a definitive object.<sup>28</sup> The rule of law is a system of legality in which the state, the leaders, and the governed all receive equitable treatment under the laws of the nation.<sup>29</sup> In its most basic form, the rule of law (as opposed to Vietnam's socialist based system) offers due process of law to all people, both the governed and those who govern. The United Nations highlights rule of law as a key to good governance and terms it "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights, norms, and standards."<sup>30</sup> Rule of law stands in stark contrast to Vietnam's version of law which confers supremacy to the party and provides no discernible separation of powers between the state and the judiciary.<sup>31</sup>

A major concept of the rule of law emphasizes the importance of judicial independence.<sup>32</sup> Liberation of the judiciary in Vietnam might allow the courts to properly interpret the constitution and legislation, and to apply it equitably across the country. An independent and powerful judiciary could also protect the people from broad legal interpretations and abuses from the party and state.<sup>33</sup> Strong legal rights of the individual, enforced uniformly by the judiciary, provide confidence and trust in both the system and the institutions it represents.

The impact of rule of law reform can be gleaned by reviewing the effects of U.S. aid to Mexico. Since 2007, the U.S. government has invested significantly in the development and reform of the Mexican legal system, a system also pierced with significant corruption.<sup>34</sup> A report by the Congressional Research Service reviewing U.S. investments and progress in Mexico shows advancement and positive effects in Mexican states where rule of law reforms have taken hold.<sup>35</sup> Likewise, continued *Doi Moi* reform can positively transform the Vietnamese system.

## EFFECTS OF *DOI MOI*

In 1986, following years of economic decline, the Vietnamese government instituted a period of *Doi Moi* (renovation) to transition their central based economy towards a market based one.<sup>36</sup> Along with economic progression, *Doi Moi* began affecting the nation's legal system. In 1992, a fresh constitution was implemented promising the people of Vietnam freedoms of religion, speech and opinion.<sup>37</sup> While these proclamations looked good on paper they were largely hollow promises of a brighter future. Many modifications to the justice system followed, but made few significant changes to the socialist legal system in place. In 2002, the constitution was amended, adding the Law on Courts, which sought to increase the independence of the judicial branch, and to provide the People's Supreme Court with more authority over lower courts and judges.<sup>38</sup>

Notable is that the National Assembly and its Standing Committee are charged with both making and explaining the constitution, laws, and ordinances.<sup>39</sup> What is noteworthy, and consistent with a socialist-based legal system, is that none of the courts have the authority to hear cases involving constitutional questions.<sup>40</sup> Absent an independent judicial body to interpret the law and its application, intrinsic to a rule of law system, there is not an organization standing between the government and the people and; therefore, no mechanism exists to protect the people from government abuses and intrusions.

Despite some positive changes, *Doi Moi* has not gone far enough to truly renovate the system. Courts at all levels still lack independence from party influence, and have little power to implement or enforce their decisions.<sup>41</sup> These deficiencies are due largely to the party's unwillingness to relinquish many of the tools of control and repression that the Soviet based legal system provides. The judiciary branch of Vietnam, particularly the courts, remains

dominated by the constitutional principle of party supremacy over state and law, which is exhibited in practices relating to the appointment of judges.<sup>42</sup>

### **PUPPET JUDGES AND KANGAROO COURTS**

Consistent with its hold over the courts, the selection of judges is controlled by party leadership.<sup>43</sup> To be eligible to serve as a judge, a candidate must defend socialist legality, and demonstrate a morality that defends the party from persons and acts that threaten it.<sup>44</sup> While required to hold a bachelor degree in law, less than seventy percent of judges actually hold law degrees in the Western sense, and some may hold no law related degree at all.<sup>45</sup> Conceivably, most supportive of party control over the selection process is a requirement for candidates to receive party endorsement before being appointed.<sup>46</sup>

At the lower provincial levels, impromptu Judicial Selection Councils make appointments through a process of “collective decision making” that often includes the payment of bribes.<sup>47</sup> Once selected, judges are appointed to five year terms, are subject to arbitrary removal processes, and receive low salaries.<sup>48</sup> Following their five year term, judges who wish to retain their office are required to go through the entire appointment process again, where their previous decisions while in office are undoubtedly compared to prevailing party doctrine. This entire process marries a prospective judge to the party for his tenure, and indentures him to party leadership in order to remain in office. At the same time, low salaries and status prime the Vietnamese judge for graft, bribery, manipulation, and other forms of venality.

As a staple of the socialist based legal system, judges are given singular control over their courtroom, where their duty is to make decisions that weigh individual claims against a capricious scale favoring state interests.<sup>49</sup> Furthermore, remnants of the Soviet based system allow judges to control courtroom dialogue, up to and including the production of evidence.<sup>50</sup> A

significant example of state control over the court can be found in “pre-trial conferences” between judges and party leaders, during which the case is discussed, and perhaps decided, prior to a formal hearing.<sup>51</sup>

The other substantial element of the Ministry of Justice is the People’s Procuracy, which can be likened to the public prosecutor in western practice. The Procuracy, like the courts, is largely controlled by the state.<sup>52</sup> The system in place is also a holdover from Soviet legal theory and vests the procuracy with the powers to investigate and prosecute violations of the law.<sup>53</sup> During trials prosecutors hold equal status to the judge of the case, and are required to be loyal party members.<sup>54</sup> Placing prosecutors at the same level as judges is yet another method by which the law based state controls the judicial process. Furthermore, Vietnam employs an inquisitional process where defense of the accused is largely ignored.<sup>55</sup> This is in contrast to an adversarial system advocated under rule of law in which the defendant’s rights are highly protected.<sup>56</sup>

*Doi Moi* has helped to move the Vietnamese legal system forward; however, the makeover should not only continue, it should be expanded to reach all levels of the judicial process. The corruption that is inherent in a socialist based legal system will remain a persistent problem until Vietnam transitions fully to the rule of law.

## **CORRUPTION**

Corruption within the Vietnamese legal system is widely known, leading to a lack of confidence in the courts and a challenge to the legitimacy of the government. Beginning in 2000 and continuing today, a series of articles have appeared in Vietnamese papers reporting false prosecutions and instances where civil or economic cases were later criminalized by the government.<sup>57</sup> A survey conducted in 2004 by the United Nations Development Program (UNDP) indicated that merely twenty percent of the rural population believed in the ability of the

courts to be “just and fair.”<sup>58</sup> Equally telling in the UNDP survey is that only sixty-five percent of respondents felt that law and fact were important factors in reaching a judicial decision.<sup>59</sup>

One obstacle that stands in the way of public usage of the court system is the practice of bribery or the paying of graft to have a case heard in court.<sup>60</sup> A 2005 survey conducted by the Communist Party found that fifty percent of those who dealt with the courts paid a fee to certain officials to have their cases admitted into proceedings.<sup>61</sup> Corruption can also be found at other levels of Vietnamese government, demonstrated by an official press report released in February of 2001 that indicated forty percent of party members were guilty of receiving grafts.<sup>62</sup> Likewise a study conducted in 2009 by the Vietnamese Chamber of Commerce and Industry revealed that thirty-six percent of business respondents reported that government officials use regulations to extort rents.<sup>63</sup>

Transparency International (TI) is an organization that monitors corruption throughout the world. TI generates a Corruption Perception Index (CPI) that is used to gauge the level of corruption present in a nation’s officials and politicians.<sup>64</sup> In 2012, TI assigned countries a corruption score between zero and one hundred where zero indicates a highly corrupt country; Vietnam scored 31 and was ranked 123<sup>rd</sup> most corrupt out of the 176 countries evaluated.<sup>65</sup> In prior years TI’s system scored countries between 0 and 10 with a lower number equating higher corruption.<sup>66</sup> Vietnam’s ratings between 2003 and 2011, while indicating some progress, demonstrate the consistent perception of corruption in Vietnam.<sup>67</sup> **(Figure 3)**

*Countries are assigned a score from 0 – 10, with 0 indicating the highest level of corruption.*

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011
Score	2.4	2.6	2.6	2.6	2.6	2.7	2.7	2.7	2.9

Fig. 3: Vietnam’s Corruption Score in the Transparency International Perception Index.<sup>68</sup>

It is little wonder that the Vietnamese people and businessmen around the world have slight faith in Vietnam’s formal legal system. Further demonstrating the high perception of major



corruption is an estimate provided by the Vietnam Development Report in which sixty-five percent of respondents indicated that corruption is a major problem for their family, and thirty-five percent characterized that corruption as “serious.”<sup>69</sup> Perhaps the World Bank’s “Country Data Report for Vietnam” is most indicative of the deeply ingrained corruption in Vietnam. According to the World Bank report Vietnam has ranked at or below the fortieth percentile in its ability to control corruption every year since 1996.<sup>70</sup> (**Figure 4**)

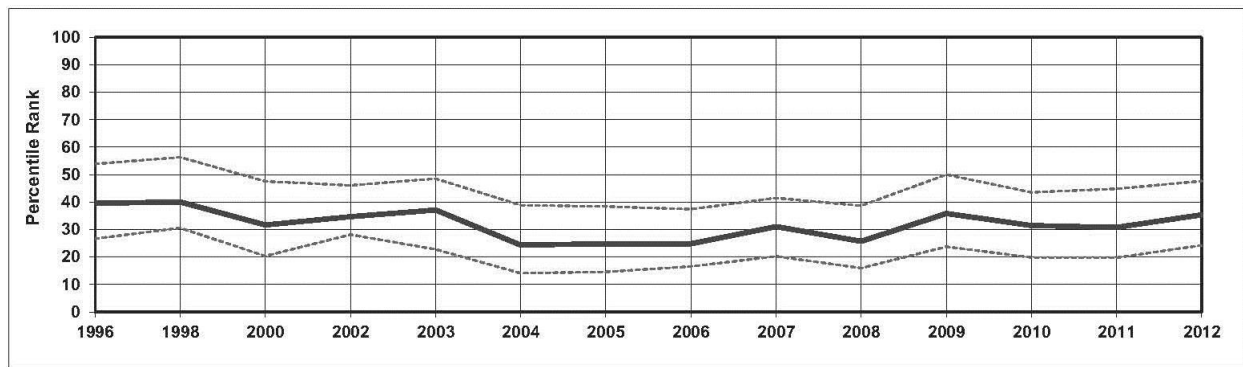


Figure 4: Aggregate Indicator: Control of Corruption.<sup>71</sup>  
*Note: dashed lines indicate margin of error.*

By any measure, Vietnam is a country where corruption is endemic. Vietnam’s corruption is unchecked due to the socialist based legal system that is in place, which in spirit gives the party license to steal. Corruption is a problem for Vietnam as it seeks to gain higher standing in the world community, and attract foreign investment in its infrastructure and economic system. Unfortunately for Vietnam and her people, their repressive legal system has institutionalized corruption and eroded human rights performance to profane levels.

## HUMAN RIGHTS

The United Nations (U.N.) Declaration of Human Rights affirms that all people have the “right to life, liberty and security of person,” and that none should “. . . be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>72</sup> In dire contrast to the U.N. position on human rights, the Vietnamese party-controlled legal system opens the door to human rights

abuses that are frequently exercised by the government. In fact, human rights abuses are so common in Vietnam that a 2013 report to the U.S. House of Representatives called Vietnam “The Worst Violator of Human Rights in Southeast Asia.”<sup>73</sup> This same report cites the Asia Advocacy Director of *Human Rights Watch*, John Sifton, who indicates cases of governmental human rights violations in Vietnam are on the rise.<sup>74</sup> This rise is revealed by the fact that during the first six months of 2013, fifty people were convicted in political trials, a number that equals the total number of people that were convicted in all of 2012.<sup>75</sup>

In recent years, many cases of human rights violations, police abuse, arbitrary arrests, torture, and show trials have circulated in the world press. One such case involved the arrest and subsequent conviction of Doctor Cu Huy Ha Vu on charges that he disseminated anti-government propaganda.<sup>76</sup> Responding to Dr. Vu’s trial, the U.S. State Department questioned the trial procedures and challenged Vietnam’s commitment to the rule of law.<sup>77</sup> Dr. Vu’s case sparked abundant controversy in Vietnam and internal public support for his release is widely trumpeted within the country.<sup>78</sup>

Although Vietnam’s Constitution promises freedom of speech and religion, the socialist legal system allows the party to subvert those provisions at will. Then General Secretary of the Communist Party of Vietnam, Nog Duc Manh, defended his country’s human rights record noting that, “No one is arrested or jailed for his or her speech or point of view. They are put in jail because they violated the law.”<sup>79</sup> Because Vietnam relies on a socialist legal system, the party decides what the law is regardless of what is written in legislation. Mr. Manh’s statement may be technically correct considering that the Communist Party uses Vietnam’s legal system as a tool for control. Woefully, it also means that in Vietnam if a person takes an action that does not meet with the approval of the Communist Party, that person risks being summarily jailed by

a socialist legal system that takes its orders from party leadership. Until rule of law reform occurs in Vietnam, human rights violations will not be controlled, nor will the freedoms promised in the Vietnamese Constitution be guaranteed to all her people.

## **CONCLUSION**

After a long history of being governed by various outside forces, Vietnam has developed an authoritarian legal system based on Confucian thought mixed with Soviet socialist practices. This system allows the party to exercise exclusive control over the law and control of the judicial process. Although *Doi Moi* reforms have made some positive impacts, the current system is still tarnished by corruption and its failure to prevent human rights violations. The corruption inherent to Vietnam's formal system is largely a product of that very system, which demands and rewards loyalty to the party and limits forward progress. Rule of law reform would provide an independent judiciary that is empowered to act as a check and balance to the powers and excesses of government. The need to abandon Vietnam's informal legal system is underlined by reports from Vietnamese involved in this system, indicating that they are willing to accept losses suffered under it rather than go to the courts for resolution.<sup>80</sup> Unlike an ad hoc informal system developed out of necessity, planned rule of law reform involves changes that are tied directly to legitimate and stable government.

Over time, inequity and disparity of treatment will likely undermine this system and result in widespread unrest, if not revolution. A legal system based on control by a single party state or by informal rules, neither of which provide adequate avenues to redress grievances, is not a reasonable solution to ensure the continued economic viability of a nation, or to guarantee the freedoms and rights of individuals. It is time for the government of Vietnam to embrace rule

of law reform for its people, and for its own survival. It is time for Vietnam to “*dua phap luat vao cuoc song*: ” bring laws to life!<sup>81</sup>

## **RECOMMENDATIONS**

As China continues to grow in economic and military power, the U.S. will need stable allies in the region to provide balance and to counter China’s expanding influence. For the continued viability of Vietnam, it is first necessary to provide a stable and equitable legal system within that country. To produce such a system, the U.S. must support Vietnam’s efforts to reform its legal system and encourage it to move towards one based on the rule of law by taking the following steps:

- 1) Work through the U.S. Department of State (DoS), USAID programs, and the U.S.

Department of Justice (DoJ) to provide opportunities for training and growth.

Legal training and education for lawyers and legal professionals, as well as exchange programs with legal professionals from developed western countries will provide numerous opportunities for growth. The influence of western legal professionals inside Vietnam will help shape and guide the culture of the legal system. Additionally Vietnamese legal professionals will gain valuable experience abroad that will enhance the depth and ensure the long term viability of the program. Providing opportunities for aspiring Vietnamese law professionals to attend western law schools will instill in them the nature of western legal principles and practice.

Western law schools should be encouraged to invest in Vietnamese legal institutions to help develop curriculum and infrastructure. A model for this can be found in the Master’s in Public Policy program offered at Vietnam’s Fulbright School in Ho Chi Minh City.<sup>82</sup> This program is a result of a partnership by Harvard’s School of Government and Vietnam’s University of Economics.<sup>83</sup> Along with leveraging the experience of western universities,

western law professors should be encouraged to teach at Vietnamese legal institutions to help speed the country's transition.

In Mexico the DoJ's "Judicial Studies Training Institute" provides substantive training for Mexican judges at the federal level.<sup>84</sup> A similar but unique program should be built to advance the education of Vietnam's senior judicial members. Providing legal and procedural training to judges at the highest levels in Vietnam will help push rule of law reforms from the top down.

Hand in hand with providing educational funding, the world community needs to link continued funding to established goals and benchmarks to ensure that Vietnam moves toward the rule of law.

- 2) Work through the United Nations Development Program (UNDP), DoS and DoJ to develop a court in Vietnam that has the authority and ability to rule on constitutional cases.

For the Vietnamese judiciary to become fully independent of state and party influence, it must have the ability to rule on the legality and constitutionality of legislation and party actions. Currently the Communist Party in Vietnam regulates its own behavior, and interprets legislation for the courts. In practice, this authority can be given to the People's Supreme Court of Vietnam, or a new judicial body can be created to fill this gap. As long as the state polices itself significant reform will not occur.

- 3) Work through the DoS, UN and other Non-Governmental Organizations such as the World Bank, to improve the salary, tenure, and standing of judges in the Vietnamese system.

A significant issue highlighted in this paper is the short tenure of Vietnamese judges as well as their low salary and standing in society. Efforts to improve this area will work toward the

reduction of corruption in the system. Professionals with adequate salaries are less likely to feel the need to accept bribes.

- 4) Develop a public awareness campaign to educate the people on the importance of the rule of law and the advantages it offers.

Regardless of the amount of international support Vietnam receives, only its people and government can implement lasting and meaningful change. A broad effort must be undertaken to highlight procedural changes to the system, to build trust, and to encourage the populace to move from its informal processes to the formal system.

### **FINAL THOUGHTS**

As noted by Aristotle, “If liberty and equality, as it thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in government to the utmost.”<sup>85</sup> Although perhaps difficult to implement, the application of the rule of law in Vietnam will, over time, eliminate the majority of the legal deficiencies this paper has outlined.

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